

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v.

BENNIE DUNLAP, III,
Appellant.

NO. 14-4956 (L)
14-4957

*MOTION TO WITHDRAW AS COUNSEL AND TO HOLD BRIEFING ORDER IN ABEYANCE
PENDING APPOINTMENT OF NEW COUNSEL*

COMES NOW, ERIC JOSEPH BRIGNAC, counsel for the Appellant, BENNIE JOSEPH DUNLAP, III, and respectfully moves this Honorable Court to allow him to withdraw as appellate counsel. With respect thereto, undersigned counsel shows the Court the following.

1. This Court has appointed the Office of the Federal Public Defender to represent Mr. Dunlap in the appeal of his supervised release revocation and sentence from the United States District Court for the Eastern District of North Carolina. The Federal Public Defender has assigned Mr. Dunlap's appeal to undersigned counsel.

2. The Federal Public Defender also represented Mr. Dunlap in the district court during the revocation hearing in this case.

3. Undersigned counsel reviewed the revocation transcript in this case. During the revocation hearing, the district judge openly criticized the performance of Mr. Dunlap's attorney from the Office of the Federal Public Defender.

4. Based on this transcript, undersigned counsel believes that zealous appellate advocacy of Mr. Dunlap may involve criticizing the performance of his district court counsel. The specter

of such criticism will create a conflict of interest between undersigned counsel's obligation to zealously advocate for Mr. Dunlap and the fact that Mr. Dunlap's district court counsel is a colleague of the undersigned.

5. After discussing the matter with Mr. Dunlap, undersigned counsel believes that Mr. Dunlap is best entitled to be represented by counsel without any appearance of or hint of divided loyalty or conflicted interest.

6. Counsel is this day sending Mr. Dunlap a copy of this motion, and is informing him of his right to respond thereto within seven (7) days.

WHEREFORE, counsel respectfully requests that the Office of the Federal Public Defender be allowed to withdraw as appellate counsel for Mr. Dunlap and that the Court appoint new counsel in this case and counsel further requests that the briefing order established in this case be held in abeyance pending resolution of this motion.

Respectfully submitted this 7th day of May, 2015.

THOMAS P. McNAMARA
Federal Public Defender

/s/ Eric J. Brignac

ERIC J. BRIGNAC
Assistant Federal Public Defender
N.C. Bar No. 28443

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing were served upon:

JENNIFER MAY PARKER,
Assistant United States Attorney

via filing through the CM/ECF system

and on

BENNIE JOSEPH DUNLAP
Register No. 54107-056
U.S.P. Terre Haute
U.S. Penitentiary
P.O. Box 33
Terre Haute, NC 47808

by mailing a copy of same.

This the 7th day of May, 2015.

/s/Eric J. Brignac
ERIC JOSEPH BRIGNAC
Assistant Federal Public Defender
N.C. Bar No. 28443